

1                   **Scharf-Norton Center for  
2                   Constitutional Litigation at the  
3                   GOLDWATER INSTITUTE**

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10                  *Attorneys for Plaintiff*

11                  **IN THE UNITED STATES DISTRICT COURT  
12                  FOR THE DISTRICT OF ARIZONA**

13                  Barry Goldwater Institute for Public Policy  
14                  Research,

15                  No. 2:24-cv-00314-SMM

16                  Plaintiffs,

17                  vs.

18                  **JOINT STATUS REPORT**

19                  U.S. Department of Education,

20                  Defendants,

21                  Pursuant to this Court's Order (Doc. 38), the Parties address the following  
22                  questions in this Joint Status Report: 1) whether oral argument may proceed on the  
23                  briefing as filed; 2) if additional briefing is needed, whether supplemental briefing  
24                  would suffice or whether entirely new motions for summary judgment are necessary;  
25                  and 3) the status of the Department's enforcement action against GCU and GCU's  
26                  appeal of such before the Department's Office of Hearings and Appeals.

27                  **Plaintiff's Position:**

28                  Oral argument may proceed with the existing briefing; no additional briefing is  
29                  necessary. As fully set forth in Plaintiff's Motion for Summary, the Institute is entitled to  
30                  relief because the Department failed to respond within the FOIA's statutory time period,  
31                  and the Department did not meet its burden of proving the application of any FOIA  
32                  exemption.

33                  As of the date of this filing, the Department has not produced the requested  
34                  records nor disavowed its prior exemption claims. Despite the change in Administration,

1 the Department has not indicated any change in its litigation position in this case. *See* 5  
2 U.S.C. § 552(a)(4)(B) (“the burden is on the agency to sustain its action.”). The FOIA  
3 requires the Department “to make the records promptly available.” 5 U.S.C.  
4 § 552(a)(3)(A). The Department has still failed to do so.

5 The legal issues raised in Plaintiff’s Motion for Summary Judgment remain fully  
6 briefed, unchanged, and ripe for immediate resolution. Further delay in this matter will  
7 only enable the Department to evade responsibility to comply with the FOIA,  
8 irrespective of any personnel changes. Accordingly, the Court should proceed with oral  
9 argument on the briefing as filed.

10 The Institute takes no position on the status of the Department’s enforcement  
11 action against GCU. Regardless of the outcome of that action, the Department remains  
12 obligated to produce the public records requested in this case, as required by the FOIA.

13 **Defendant’s Position:**

14 As the Court is likely aware, the Department of Education has undergone a  
15 significant reduction in force in the last 30 days. The agency attorneys who assisted  
16 significantly with this case have been terminated, as have their supervisors, and no one  
17 at the Department of Education has yet been able to access to their files, although they  
18 are working to gain access. Because of the abrupt departures of the attorneys and of  
19 Department leadership, no one remaining at the Department of Education was aware of  
20 this case or had been pursuing the potential re-processing and re-release of the  
21 documents. As a result, counsel cannot say whether additional briefing will be needed  
22 because no one at the Department of Education can advise whether the documents will  
23 be re-processed. Counsel has been advised that on March 26, 2025, the Department of  
24 Education withdrew the fine against GCU and GCU dismissed its appeal of the fine. In  
25 light of the uncertainty regarding the Department of Education’s position regarding the  
26 whether the documents will be re-processed, Defendant asks that the oral argument be  
27 postponed until the Department of Education can access the departed attorneys’ files and  
28 make a decision regarding re-processing the documents.

**RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of April, 2025 by:

/s/ Stacy Skanke  
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**Scharf-Norton Center for Constitutional Litigation  
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**TIMOTHY COURCHAINE**  
**UNITED STATES ATTORNEY**  
**DISTRICT OF ARIZONA**

## **CERTIFICATE OF SERVICE**

Document Electronically Filed and Served on all counsel of record by ECF this  
11th day of April, 2025.

/s/ Kris Schlott  
Kris Schlott, Paralegal